

BEFORE THE ILLINOIS TORTURE INQUIRY AND RELIEF COMMISSION

In re:

Claim of Edward Mitchell

TIRC No. 2013.162-M

(Relates to Cook County Circuit

Court No. 99-19684(02))

Summary Dismissal

Pursuant to 775 ILCS 40/40(a) and 775 ILCS 5(1), the Commission summarily dismisses this Claim as it is without jurisdiction in this matter. The Commission notes, however, that if jurisdiction existed, it would find sufficient evidence of torture exists to merit judicial review.

Executive Summary

Edward Mitchell was convicted in the Circuit Court, Cook County, of first-degree murder in 2002.¹ The appellate court reversed and remanded for a new trial, noting that Mitchell's [date of and timed] videotaped confession was involuntary.² Mitchell's videotaped confession was the very first videotaped confession taken in Illinois. Mitchell was again convicted of first-degree murder at his second trial.³

Mitchell submitted a claim form⁴ to the Commission on July 14, 2013, claiming the following: while in custody, which began on the evening of July 31, 1999, he was "slapped, punched, kicked, and threatened" by officers; he was denied contact with his attorney; police tore up his property; he suffered "physical abuse, choking, sleep deprivation, food deprivation, restroom deprivation...slaps, kicks, mental abuse"; he was usually handcuffed to a wall for the duration of his time in custody; he was forced to watch the videotape of the shooting at issue; he was subjected to ongoing questioning, hospitalization, and tightening of handcuffs; and after a "coerced confession, [he] was beaten and hospitalized again" before his arraignment on August 6, 1999.

During his interview with TIRC, Mitchell repeated the claims in his claim form, and went into great detail regarding alleged gross physical and mental mistreatment which occurred over the course of six days.⁵ According to Mitchell, this mistreatment briefly ended when he was forced to confess, but resumed in the form of physical and verbal abuse after his confession.

¹ See TIRC-Compiled Record of court Proceedings (*hereinafter* TCROP) 2232.

² See *People v. Mitchell*, 366 Ill.App.3d 1044, 1055 (2006).

³ TCROP 3419.

⁴ See TIRC claim form.

⁵ *Hear* TIRC Interview of Edward Mitchell, May 14, 2021.

Mitchell was brought before a judge on August 6, 1999—6 days after he was initially arrested on July 31.

Mitchell's confession was suppressed during his second trial, and Mitchell did not indicate that he provided any information to police during his interrogation which led them to evidence used to convict him in his second trial. Thus, despite the credible allegations of torture, the Commission declines to continue with a formal inquiry into his allegations and summarily dismisses his claim.

Further, due to the long period of time that has elapsed since Mitchell's interrogation and the almost certain retirement from CPD of the detectives involved, the Commission declines to issue informal referral orders. However, given the value in the public and the criminal justice system examining the many mistakes made in this case, we are erring in favor of providing the public more details rather than fewer in this opinion.

Among the key factors supporting Mitchell's credible claims of torture are:

- Mitchell's consistent account of torture beginning during his taped confession, when he showed injuries to the camera and described physical abuse to the questioning assistant state's attorney;
- Mitchell's documented and undisputed egregiously lengthy interrogation, lack of communication with any counsel, and prolonged period of time in custody prior to arraignment; and
- Mitchell's highly detailed recollection of events.

Again, if not for the jurisdictional issues which do not support the Commission's intervention, there is sufficient evidence of torture in Mitchell's case that would merit judicial review.

Findings of Fact

I. The Crime and Interrogation

On the evening of July 31, 1999, eight-year-old Paulette Peake was shot and killed while standing inside a grocery store on the corner of 79th Street and Sangamon in Chicago. According to Officer Ronald Spraggins of the Chicago police department, Spraggins observed Mitchell jumping over a fence, pursued him, and arrested him in an alley. According to Spraggins, he and his partner transported Mitchell to the sixth district station for interrogation.

According to Mitchell, he was arrested that evening and placed in a paddywagon, where he was transported to multiple different locations over the course of hours. At one point, according to Mitchell, an officer climbed in the paddywagon with him, struck him, and questioned him.

According to police, Mitchell was briefly interviewed at the sixth district and told he was not being charged and would be released from the sixth district. According to Detective Robert Arteaga, Mitchell agreed to help police with the investigation and voluntarily went with detectives to Area 2, where he was ultimately placed under arrest hours later after being identified as the shooter by co-defendant Kevin Johnson.

According to Mitchell, police initially questioned him aggressively, threatening him if he did not identify others involved in the shooting. After he was transported to Area 2, Mitchell said police handcuffed him to the wall of a holding cell in a position that did not allow him to sleep in a comfortable horizontal manner.

Over the course of the next several days, Mitchell alleged the following conduct:

- Mitchell repeatedly asked to see his attorney and provided the contact information for his attorney, which police ripped up;
- Mitchell was transported between a holding cell, where he was chained to the wall, and an interrogation room, where he was repeatedly shown the video of the shooting;
- Mitchell was hit, slapped, and kicked in various parts of his body, including his head and chest;
- Mitchell was choked and kned in the groin area by officers;
- Officers did not permit Mitchell to use the bathroom, and berated him when he urinated on the floor;
- Officers did not provide Mitchell food and water until after he confessed;
- Officers encouraged Mitchell to kill himself;
- Officers threatened to kill Mitchell if he didn't confess;
- One officer referenced Mitchell's deceased brother and Mitchell's imprisoned brother;
- Mitchell was subjected to prolonged sleep deprivation, as officers kept him in an uncomfortable position and questioned him approximately every few hours over a six day period;
- Mitchell's cell was uncomfortably cold, and he was not provided with blankets, towels, a pillow, etc.
- Officers said the interrogation would not end and Mitchell's circumstances would not improve until he confessed;
- After they found Mitchell in his cell bleeding from a self-inflicted cut to his wrist, one officer said "we hope you die";

- Officers continued the abuse after Mitchell was transported back to his cell after receiving stitches and medical care.

II. Trial

Prior to Mitchell's first trial, he moved to suppress his confession. The trial court found that he had given his statement voluntarily and denied his motion to suppress the statement. Thus, Mitchell was initially convicted partially on the basis of his confession.

III. Post-First Conviction

After a hearing regarding the voluntariness of Mitchell's confession, which took place over a period of 9 months and generated over 900 pages of testimony from 18 witnesses, the appellate court found that the trial court had erred in denying Mitchell's motion to suppress his confession. The appellate court stated: "A review of this record reflects the trial judge was manifestly erroneous in denying suppression of defendant's confession based on the totality of the circumstances, including, but not limited to, the following: (1) the length of the delay in taking defendant to court for a Gerstein probable cause hearing; (2) the failure of the State to demonstrate any bona fide emergency or other extraordinary circumstance for the delay; (3) the nature, extent, and duration of repeated questioning by police and prosecution; (4) defendant's physical condition at the time of questioning; (5) defendant's denial, which persisted for 100 hours; (6) the trial court's inconsistent credibility findings; and (7) the trial court's findings of fact, which were contradicted by the record."

The appellate court found, in relevant part, among other issues:

- "Inherent inconsistencies in the trial judge's evaluation of [arresting officers Detective Van Witzenberg and Detective Arteaga's] credibility. Detective Van Witzenberg is the same detective who, together with Detective Arteaga, testified that defendant voluntarily helped the police investigate the homicide and willingly stayed in interview room 3 on August 1, 1999, with the door locked, from 6 a.m. until 2 p.m."
- "The trial judge's findings regarding testimony provided by [Detective Van Witzenberg and Detective Arteaga] as to defendant's physical condition during repeated interrogation is not entitled to deference and is against the manifest weight of the evidence."
- A judicial determination of probable cause was not made within 48 hours of arrest; in fact, defendant was presented before a judge for probable cause more than 110 hours later, and agreed to give a videotaped confession approximately 85 hours after his custodial detention began. In this case, the appellate court found no emergency or extraordinary circumstance justifying that significant delay.
- Mitchell had been in custody for 100 hours when he made his first incriminating statement—as such, "Prolonged detention between arrest and confession 'may serve to amplify the coercion latent in a custodial setting, particularly when there are other indicia of coercion.'"

IV. Second Trial

During Mitchell's second trial, the prosecution was not permitted to reference his confession. In summary, Mitchell was convicted on the basis of a co-defendant's testimony; testimony from three neighborhood residents; and physical evidence recovered alongside the murder weapon, found in a garage.

V. Post-Second Conviction

After Mitchell was convicted of first degree murder on retrial in the Circuit Court of Cook County, he raised the following issues on appeal:

- He challenged the fingerprint evidence that placed him in the garage where the murder weapon was recovered, and disputed the fingerprint expert's expert status;
- He challenged the testimony of the prosecution's DNA expert; and
- He contended that the lower court erred in rejecting his request to further impeach a material and unavailable witness, whose testimony from the first trial was read to the jury.

The appellate court disagreed with these claims and affirmed Mitchell's conviction. Notably, for the purposes of this claim, we found no tie between the evidence presented at trial used to convict Mitchell—including fingerprint evidence and other physical evidence recovered at the garage—and his interrogation and alleged torture.

VI. Investigation

Prior to interviewing Edward Mitchell, the Commission attempted to locate Mitchell's co-defendant, Kevin Johnson, via a private investigator, in order to help assess jurisdictional issues. It was unsuccessful in its attempts to locate Mr. Johnson.⁶

VII. Evaluating Mitchell's Credibility

During his TIRC interview, Mitchell appeared sincere and credible. Mitchell described his days in custody with specific, detailed articulation. At a minimum, the egregious timeline of his imprisonment prior to a hearing is undisputed.

When Mitchell was first detained, he was experienced with the criminal justice system given prior issues with law enforcement, and thus familiar with his *Miranda* rights. According to Mitchell's account during his TIRC interview, he repeatedly asked for his lawyer. According to Detective Van Witzenberg, who communicated with Mitchell repeatedly throughout the days of his interrogation, Mitchell never asked to call his lawyer. We find Mitchell's account of his requests for counsel credible.

⁶ See March 26, 2021 and April 9, 2021 Memoranda on attempts to locate Johnson.

Mitchell did not include certain facts during his interview, including the facts—according to the appellate record—that he was permitted to call his mother on the evening of August 3, and that he was permitted to use the restroom (albeit sparingly). However, the fact that he was not permitted to call anyone, including a family member or lawyer, for approximately 72 hours—a fact that is undisputed in the record—suggests egregious psychological issues with his treatment.

Analysis

The Illinois Torture Inquiry and Relief Commission Act (TIRC Act) gives the Commission authority to review only Claims of Torture, defined as “a claim on behalf of a living person convicted of a felony in Illinois asserting that he was tortured into confessing to the crime for which the person was convicted *and the tortured confession was used to obtain the conviction* and for which there is some credible evidence related to allegations of torture occurring within a county of more than 3,000,000 inhabitants.” 775 ILCS 40/5 (Emphasis added).

A confession can be “used to obtain the conviction” in several ways – including by direct introduction at trial, by serving to keep the claimant from testifying at trial in his own defense, by inducing a guilty plea, or by leading police to other incriminating evidence that is used to obtain his conviction (the “fruit of the poisonous tree”). *See In re Claim of Tony Anderson*, TIRC Determination decided May 20, 2015, 12-13; *see also In re Claim of Alnoraindus Burton*, TIRC Determination decided Oct. 16, 2019, 19-20 – both available at www2.illinois.gov/sites/tirc/Pages/TIRCDDecision.aspx.

Mitchell did not plead guilty but was retried; at his retrial, the confession was prohibited from being introduced; and Mitchell testified in his own defense.⁷ The Commission explored whether any of the evidence used at trial may have been obtained via his torture and used to convict him.

Commission staff raised the jurisdictional issue with Mitchell’s attorney, Steven Becker, who maintained that the Mitchell confession to police included admissions to police about returning the murder weapon to a car in a garage (“the Barn”). He maintains this led police to the murder weapon and a Mitchell fingerprint found on the car in the Barn. Both pieces of evidence were used in the second trial to convict Johnson.⁸

Also examined by Commission staff was whether Mitchell’s confession may have been used to induce his co-defendant, Kevin Johnson, to secure his confession and his subsequent testimony in the second trial against Mitchell.

⁷ TCROP 3210.

⁸ *See* Becker, Steven, November 30, 2020 Memo to Commission regarding jurisdiction.

However, the evidence available to the Commission indicated that Mitchell made no incriminating statements to police for 100 hours – well after co-defendant Johnson had led police to the murder weapon.⁹ Therefore, it does not appear Mr. Mitchell's confession played any role in obtaining Johnson's cooperation.

Regarding the gun, testimony showed it was recovered on August 1, 1999 at 3 p.m., long before Mitchell confessed.¹⁰ Regarding the fingerprint, testimony showed that it, too, was recovered the same day, and that investigators fingerprinted Mitchell on August 3, 1999 as part of their investigation. Both of those events occurred before Mitchell's August 5, 1999 confession.¹¹

Mitchell's attorney, Becker, argues that because the fingerprint analysis wasn't issued until August 23, 1999 -- well after Mitchell's confession was given, it constitutes fruit of the poisonous tree. We respectfully disagree. The evidence was collected as a result of Johnson's confession before Mitchell confessed. All the police actions indicated they were gathering evidence to use to convict either Johnson or Mitchell, and that they intended to check the gun and the recovered fingerprints for ties to either Johnson or Mitchell. Even absent Mitchell's confession, police would have otherwise discovered both these pieces of evidence because of Johnson's confession. That analysis of the fingerprint was not completed until weeks later does not change the date it was obtained.

Conclusion

Although the Commission does not conclude that the alleged torture in this case occurred, it notes that there is more than sufficient evidence of torture that would merit referral to a judge if the jurisdictional issues were not present. Since Mitchell's confession was already excluded by the appellate court, however, and since the evidence used to convict Mitchell in his second trial does not appear to have stemmed from Mitchell's interrogation, the Commission is without jurisdiction in this matter and dismisses the claim.

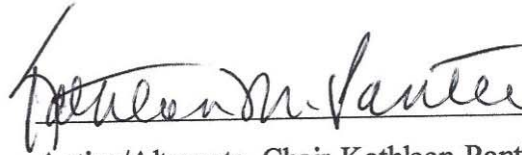
⁹ See *People v. Mitchell*, 366 Ill.App.3d 1044, 1049-1050, 1053 (2006) (Noting, "For the first 100 hours of this detention, [Mitchell] denied involvement in the homicide," and "[The] defendant had not * * * made any incriminating statements before the warrant is sued on August 3, 1999. The documents accompanying the warrant included codefendant Kevin Johnson's statement implicating defendant."); See also Alfini, Paul, "Cleared Closed Report," CPD, September 2, 1999; Hear also TIRC's May 14, 2021 interview of Mitchell, in which he denied making any incriminating statements until August 5.

¹⁰ TCROP 3009.

¹¹ TCROP 3027-3032.

The Commission further instructions its director to notify Mitchell of its decision and to inform him of his right to review under the Illinois Administrative Review Law.¹²

Date: June 16, 2021


Acting/Alternate Chair Kathleen Pantle

¹² See 775 ILCS 40/55(a) of the TIRC Act. Although this determination does not concern a “contested case” as defined in Section 1-30 of the Illinois Administrative Procedures Act (5 ILCS 100/1-30) because no opportunity for a hearing is required (See 775 ILCS 40/45(a)), the Commission notes that the rules of the Commission do not require any motion or request for reconsideration before appeal under the Administrative Review Law, and notes that the service address of interested parties is listed in the Notice of Filing certificate that accompanies the filing of this determination with the Court.